

COMMENTS

CONGRESSIONAL COLONIALISM IN THE PACIFIC: THE CASE OF THE NORTHERN MARIANA ISLANDS AND ITS COVENANT WITH THE UNITED STATES

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[O]ver the course of 400 years of our history, the people of the Northern Mariana Islands District have experienced the dominance of . . . foreign powers By virtue of annexation or conquest, and without any consultation and consideration, our lives, homes, lands, culture, and traditions were abruptly and drastically changed. Never was there an opportunity for our people to have the right to speak out on the important matters which faced them, such as the nature of their government, the development of their country and their future destiny. But this is now coming to an end.¹

I. INTRODUCTION

The Commonwealth of the Northern Mariana Islands is comprised of a chain of fourteen islands in the western Pacific Ocean.² Since their discovery by Spain in 1592, several nations have ruled over the Islands and its inhabitants.³ Throughout the various occupations by Spain, Germany, Japan, and the United States, the Islands' economic and living conditions remained, for the most part, unstable and underdeveloped.⁴ After four centuries of colonization, however, the Islands sought a democratic form

1. Marianas Political Status Negotiation, Opening Round (1972), reprinted in *To Approve "The Convenant to Establish a Commonwealth of The Northern Mariana Islands," and for Other Purposes: Hearing on H.J. Res. 549, H.J. Res. 550, and H.J. Res. 547 Before the House Subcommittee on Territorial and Insular Affairs of the House Comm. On Interior and Insular Affairs*, 94th Cong. 1st Sess. 136 (1975) [hereinafter *Marianas Political Status Negotiation, Opening Round*] (Welcoming Address of Senator Edward D.L.G. Pangelinan, Chairman of the Marianas Political Status Commission) (on file with the author).

2. See Victoria King, Comment, *The Commonwealth of the Northern Mariana Islands' Rights Under United States and International Law to Control its Exclusive Economic Zone*, 13 U. HAW. L. REV. 477, 480 (1991); Lydia Camacho-Romisher, *The Regulatory Life Cycle and Regulatory Concerns for the Utilities of the Northern Mariana Islands*, 40 NAT. RESOURCES J. 569, 574 (2000).

3. See ARNOLD H. LEIBOWITZ, *DEFINING STATUS, A COMPREHENSIVE ANALYSIS OF UNITED STATES TERRITORIAL RELATIONS* 481 (1990); King, *supra* note 2, at 480-482; see also William H. Stewart, *The Commonwealth of the Northern Mariana Islands: Helpful Facts and Information* at http://www.saipan.com/cnmiinfo/info_pg2htm (last visited Sept. 28, 2000). The indigenous peoples of the Northern Mariana Islands are known as Chamorros and their original home is unclear. See *id.* Some say they migrated from somewhere in Malaysia, while other historians found these people to be "seafaring Vikings who had lost their way and were marooned on the islands." See *id.* After a revolt against their Spanish colonizers, what was left of the Chamorro people were sent to Guam, an island south of the Northern Mariana Islands, where the Spanish government was headquartered. See King, *supra* note 2, at 481. The Carolinians were the first of the indigenous population to return to the NMI. See *id.* The Carolinians settled on the Islands when their Island—the Caroline Islands—were damaged by a strong typhoon. See *id.* Eventually, the Chamorros returned to the Northern Mariana Islands. See *id.* As a result, two distinct cultural ethnicities reside in the Northern Marianas. See *id.*

4. See LEIBOWITZ, *supra* note 3, at 523-26.

of government that would ensure the political freedom long absent during the Islands' colonial history.⁵ Thus, when the opportunity to establish a political relationship with the United States arose, the Northern Mariana Islands became eager participants in the process that would culminate in the Islands' status as a United States Commonwealth.

In keeping with the Northern Mariana Islands' objectives, the Chairman of the Political Status Commission stated: "these negotiations reflect the high value which we place on the freedoms and democratic form of government which mark the American political system. We want a government which assures these rights and freedoms and which recognizes the fundamental equality of all men under the law."⁶ Hence, the political relationship between the United States and the Northern Mariana Islands was formed under the Covenant to Establish a Commonwealth of the Northern Mariana Islands, hereinafter the "Covenant."⁷

The Islands have benefited both economically and politically from their Commonwealth status.⁸ The United States has not only provided millions of dollars to boost the Islands' struggling economy, but it has also managed the Islands' foreign affairs and defense.⁹

5. See Marianas Political Status Negotiations, Opening Round, *supra* note 1.

6. Marianas Political Status Negotiations, Fifth Session (1974), reprinted in *To Approve "The Covenant to Establish a Commonwealth of The Northern Mariana Islands," and for Other Purposes: Hearing on H.J. Res. 549, H.J. 550, and H.J. Res. 547 Before the House Subcommittee on Territorial and Insular Affairs of the House Comm. On Interior and Insular Affairs*, 94th Cong. 1st Sess. 230-31 (1975) [hereinafter *Marianas Political Status Negotiations, Fifth Session*] (Welcoming Address of Senator Edward DLG. Pangelinan, Chairman of the Marianas Political Status Commission) (on file with the author).

7. See Covenant to Establish a Commonwealth of the Northern Mariana Islands, 48 U.S.C.A. § 1801 (West 2000). Covenant is defined as a "binding agreement like a contract" thus appropriate because the relationship between the United States and the Northern Mariana Islands will be a permanent one, which cannot be altered by any party without the consent of the other. See *To Approve "The Covenant to Establish a Commonwealth of The Northern Mariana Islands," and for Other Purposes: Hearing on H.J. Res. 549, H.J. 550, and H.J. Res. 547 Before the House Subcommittee on Territorial and Insular Affairs of the House Comm. On Interior and Insular Affairs*, 94th Cong. 1st Sess. 627 (1975) (section-by-section analysis) (on file with the author) [hereinafter *Hearing on H.J. Res. 549, H.J. 550, and H.J. Res. 547*].

8. See Covenant to Establish a Commonwealth of the Northern Mariana Islands, 48 U.S.C.A. § 1801 art. VII, § 702 (West Supp. 2000). The Covenant stated that the United States would furnish financial aid to the Islands for the seven years following the effective date of the Covenant, which amounted to over \$70 million in aid from 1996 through 2002. See *id.*

9. See *id.* § 1801, art. I, § 104 (indicating that the United States will have complete authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands); Peter Bergsman, *The Marianas, The United States and The United Nations: The Uncertain Status of the New American Commonwealth*, 6 CAL. W. INT'L. L.J.

Although the Islands' political relationship with the United States has conferred many benefits, the trappings of this newfound democracy did not come without a price. In becoming a United States Commonwealth, the Islands surrendered certain elements of their sovereignty.¹⁰ Just how much sovereignty was surrendered continues to cause discord between the Northern Mariana Islands and the United States.¹¹ Although the United States claims to possess virtually absolute sovereignty over the Islands, the Islands contend that a limited right to local self-government remains intact.¹² Furthermore, although the Covenant does provide for United States sovereignty over the Islands, it also specifically calls for the Islands to retain a degree of local self-government.¹³

This comment traces the history of the Covenant and examines the current political relationship between the United States and the Islands. Part II delineates the Northern Mariana Islands history from colonization to its recent political status with the United States. Part III discusses the Covenant's fundamental provisions and the judiciary's interpretation of the Covenant. Particularly, Part III analyzes the United States' sovereignty over the Islands and the safeguards of the mutual consent provision. Part IV reflects on America's expansionist past by examining the history of United States' relations with Native Americans and the Native Hawai'ians. Specifically, Part IV compares Native American and Native Hawai'ians opposition to American sovereignty to the current situation on the Northern Mariana Islands.

Part V of this comment explores recent legislation introduced by Congress, which includes both the Covenant Implementation Act¹⁴ and the Made in USA Label Defense Act.¹⁵ The Covenant Implementation Act

382, 398 (1976) (finding that the Covenant furnished the United States full control of Marianas foreign affairs).

10. See Covenant to Establish a Commonwealth of the Northern Mariana Islands, 48 U.S.C.A. § 1801 art. I, § 101 (West Supp. 2000) (providing that the Northern Mariana Islands would be "in political union with and under the sovereignty of the United States of America").

11. See Justice Ramon G. Villagomez, Address at the 1994 Conference on U.S. Federal-Insular Areas Relations (May 26, 1994) (transcript on file with the author). Justice Villagomez was Associate Justice for the Commonwealth Northern Mariana Islands Supreme Court from 1989 through 1997, as well as a designated judge for the Federal District Court in Saipan from February 1986 to May 1989.

12. See *id.*

13. Compare Covenant to Establish a Commonwealth of the Northern Mariana Islands, 48 U.S.C.A. § 1801, art. I, § 101 (West Supp. 2000), with 48 U.S.C.A. § 1801, art. I, § 103 (West Supp. 2000).

14. See Northern Mariana Islands Covenant Implementation Act, S. 1052, 106th Cong. (2000), WL 1999 CONG US S 1052 (1998).

15. See Made in USA Label Defense Act of 1999, S. 922, 106th Cong. § 7 (1999); Made in USA Label Defense Act of 1999, HR 1621, 106th Cong. § 7-8 (1999); Government

would impose the United States immigration laws on the Islands usurping the current local control.¹⁶ The United States is also considering the Made in USA Label Defense Act. This federal legislation imposes restrictions and tariffs on textile products manufactured in the Islands.¹⁷ Aside from the disastrous effect, these acts will have on the Islands' economy, they additionally infringe on the Islands right to self-governance.¹⁸

Finally, Part VI calls for the courts as well as Congress to defer to the negotiating history documents of the Covenant when interpreting or proposing legislation over the Islands. The documents reflect the clear promises by the United States to uphold the Island's request for self-government.

II. HISTORICAL BACKGROUND

A. Colonization under Spain, Germany and Japan

It is unclear exactly how the Spaniards stumbled upon the Northern Mariana Islands. History tells of the Spanish explorer Magellan discovering the Islands while its inhabitants lived peacefully among themselves.¹⁹

Press Release, Abraham Unveils Legislation to Protect Integrity of the Made in USA Label (Apr. 29, 1999), *available at* 1999 WL 2223684.

16. See Northern Mariana Islands Covenant Implementation Act, S. 1052, 106th Cong. § 1(6)(1), WL 1999 CONG US S 1052 S. REP. NO. 105-201 (1998) (detailing that Congress seeks to implement federal control over local immigration by amending the Covenant to transfer local immigration control to the United States; *Immigration and Labor Problems in Mariana Testimony Regarding S. 1052 Before the Senate Energy and Natural Resources Comm.*, 105th Cong. (1999) (statement of Juan N. Babuta, Resident Rep., Commonwealth of the Northern Mariana Islands), *available at* 1999 WL 27594416 [hereinafter *Statement of Juan B. Babuta*] (indicating that the passage of Senate Bill 1052 would abolish all local control of immigration decisions).

17. See Made in USA Label Defense Act of 1999, S. 922, 106th Cong. § 7 (1999); Made in USA Label Defense Act of 1999, HR 1621, 106th Cong. § 7-8 (1999); Government Press Release, *supra* note 15; John Hall, *Congress Eyeing Bill to End Tariff Dodging China Labeling Garments 'Made in USA,'* RICH. TIMES DISPATCH, July 17, 2000, at A1, *available at* 2000 WL 5042990.

18. See generally Statement of Juan N. Babauta, *supra* note 16 (warning that the passage of the Covenant Implementation Act would take all decisions affecting immigration away from the Islands and to the United States); *Extending U.S. Immigration & Wage Laws to Marianas Commonwealth of the Northern Mariana Islands: Hearing on S. 1100 and S. 1275 Before the Committee on Energy and Natural Resources*, 105th Cong. (1998) (Position Paper Submitted by House of Representatives Eleventh Commonwealth of the Northern Mariana Islands), *available at* 1998 WL 18089833 [hereinafter *Position Paper*] (indicating that the imposition of United States immigration laws and restriction on the USA label would return the islands to dependency on federal grants and aids).

19. See LEIBOWITZ, *supra* note 3, at 485; Stewart, *supra* note 3. Spain christened the isles "Las Marianas" after the King of Spain's widow, Mariana of Austria. See *id.* The indigenous population was nearly wiped out by its Spanish colonizers when the colonists committed genocide against the Chamorro people. See *id.*

In comparison with other Colonizers, Spain's colonization of the Islands was the lengthiest.²⁰ However, Spain's objectives for the Islands were extremely limited.²¹ It sought only to institute Christianity and to use the Islands as a way station for Spanish ships.²² Despite these limited objectives, the Spanish did manage to nearly eliminate the local Chamorro race through acts of genocide in the Seventeenth century.²³

In 1899, during the Spanish-American War, Spain sold the Islands to Germany.²⁴ Germany colonized the Islands briefly²⁵ and instituted agriculture, fishing, and copra²⁶ and coconut production to sustain the Islands' economy.²⁷ Unfortunately, Germany's commercialization of the Islands came at the expense of the indigenous population.²⁸

After Germany lost World War I, the Japanese gained control of the Islands under a League of Nations mandate.²⁹ For thirty years, the indigenous population was at the mercy of the Japanese, who required them to speak only in Japanese and to labor in the sugarcane fields.³⁰

During the Japanese administration of the Islands, Japanese civilians outnumbered the indigenous population.³¹ The Japanese established a sugar and molasses industry and cultivated copra and coffee for Japan's

20. See LEIBOWITZ, *supra* note 3, at 483-487 (detailing the colonization of Micronesia by Spain, Germany, and Japan); Stewart, *supra* note 3 (establishing that Spain colonized the islands from 1521 until 1899).

21. See LEIBOWITZ, *supra* note 3, at 525 (relating that Spain's objectives for the islands included porting Spanish ships and converting natives to their religion).

22. See *id.*

23. See DONALD F. McHENRY, *MICRONESIA: TRUST BETRAYED* 5 (1975); Stewart, *supra* note 3.

24. See Stewart, *supra* note 3. The oppression of the indigenous people under Germany's colonization remained unchanged from the previous colonizer. See *id.* Although public schools were built, the natives were taught only in German and forced to plant coconut trees or face harsh punishment. See *id.*

25. See LEIBOWITZ, *supra* note 3, at 523-25 (detailing that the German occupation began in 1899 and lasted until 1914 when the Japanese began occupying the Islands).

26. Copra is the dried kernels of the coconut. See *THE CONCISE OXFORD DICTIONARY* 254 (8th ed. 1990).

27. See CNMI GOV'T HISTORY AND POLITICS, at <http://www.mariana-islands.gov.mp/history.htm> (last visited Jan. 16, 2001).

28. See LEIBOWITZ, *supra* note 3, at 485; see Justice Ramon G. Villagomez, *supra* note 11.

29. See Marybeth Herald, *The Northern Marian Islands: A Change in Course Under Its Covenant with the United States*, 71 OR. L. REV. 127, 131 (1992).

30. See Telephone Interview with Rosa Lizma Taisacan, Resident of the Northern Mariana Islands (Oct. 1, 1999) (transcript on file with the author) (relating her personal experience as a young woman during Japanese colonization).

31. See LEIBOWITZ, *supra* note 3, at 486 n.10 (indicating that in 1937, the Japanese outnumbered the Micronesians by almost 10,000).

own economic benefit.³² Although the Japanese established additional educational institutions, classes were taught only in Japanese and Islanders were permitted only limited participation.³³ After World War II, Japan was forced to surrender its prized possession,³⁴ and the Northern Mariana Islands came under the auspices of the United Nations.³⁵

B. *Pre-Covenant Status: The Northern Mariana Islands as a Trust Territory*

The United States' relationship with the Northern Mariana Islands began when American forces took control of the Islands after thirty years of Japanese occupation.³⁶ President Truman refused annexation and subjected the Islands to the United Nations' trusteeship system.³⁷

The trust, known as the Trust Territory of the Pacific Islands, provided for the supervision of formerly mandated territories.³⁸ President Truman wanted the Islands designated as a "strategic trust" because of the Islands' advantageous location in the Pacific.³⁹ Aside from the Northern Mariana Islands, the Trust included five other districts (Pohnpei, Truk, Yap,⁴⁰ Marshals, and Palau⁴¹) collectively known as the Micronesian Islands.⁴²

32. See *id.* at 526 (providing a historical background of the Islands during Japanese occupation).

33. See *id.*

34. See *id.* (stating that the Marianas "had served the Japanese as bases for protection of their most vital communication lines and as bases for their attacks and conquests throughout the Pacific").

35. See, *id.* at 487.

36. See Bergsman, *supra* note 9, at 384; Stewart, *supra* note 3.

37. See Jon Hinck, Comment, *The Republic of Palau and the United States: Self-Determination Becomes the Price of Free Association*, 78 CAL. L. REV. 915, 920 (1990).

38. See *id.* at 920-21.

39. See LEIBOWITZ, *supra* note 3, at 487. Leibowitz provides insight into the United States' motives for its interest in the Islands. He comments that the United States perceived the Islands as important but insignificant in economic value. See *id.* United States representative to the United Nations Security Council stated: "We have here islands that in many instances are nothing but sandpits. Our sole interest in them is security." *Id.* See, e.g., D. Michael Green, *America's Strategic Trusteeship Dilemma: Its Humanitarian Obligations*, 9 TEX. INT'L L.J. 19, 20-21 (1974); Arnold H. Leibowitz, Article, *The Marianas Covenant Negotiations*, 4 FORDHAM INT'L L.J. 19, 19 n.3 (1981); Hinck, *supra* note 37, at 920.

40. Pohnpei, Truk, and Yap are now known as the "Federated States of Micronesia." See LEIBOWITZ, *supra* note 3, at 499.

41. See *id.*

42. Micronesia is the term used to describe this archipelago in the Pacific. See, e.g., Bergsman, *supra* note 9, at 382 n.5; Justice Ramon G. Villagomez, *supra* note 11.

On April 2, 1947, the United Nations Security Council approved the trust agreement for the Islands.⁴³ The agreement provided that the Trust would be formed under an accord between the United States, who would act as administering authority, and the U.N. Security Council, rather than the U.N. General Assembly.⁴⁴

The Trust proved advantageous to the United States for several reasons. First, because the United States was a permanent member of the Security Council, it had a guaranteed veto over any actions that affected the Trust Territory.⁴⁵ Thus, the United States approved all measures concerning the Islands and could exert some control over the trust agreement if it did not agree with how the Islands were managed. Also, the United States had the authority to make fortifications on the Islands to maintain international peace and security.⁴⁶ This meant that the United States, as administrator of the Islands, could forbid the United Nations from overseeing any part of the Islands by designating the Islands closed for security purposes.⁴⁷

The United States' administration of the trust territory did nothing to speed the Islands' political and economic progress.⁴⁸ The Trust imposed certain duties on the United States, which included encouraging the inhabitants to establish political institutions, to participate in government, and to strive towards self-government or independence.⁴⁹ The United States exercised absolute authority over the territory⁵⁰ but did little to foster economic growth in the Islands.⁵¹ In the 1960s, Micronesians be-

43. See LEIBOWITZ, *supra* note 3, at 488; see also Hinck, *supra* note 37, at 920-21 (providing a brief description of the Trust's establishment).

44. See LEIBOWITZ, *supra* note 3, at 488; Hinck, *supra* note 37, at 921.

45. See Hinck, *supra* note 37, at 921 (commenting on the advantageous position of the United States as the islands' administrator).

46. See *id.* at 920.

47. See Leibowitz, *supra* note 39.

48. See LEIBOWITZ, *supra* note 3, at 496 (claiming the United Nations visiting mission to Micronesia in 1961 criticized the United States administration of the islands because of the "inadequate economic development, poor educational programs, lack of health care, poor transportation, and failure to adequately compensate for land taken for military purposes"); Hinck, *supra* note 37, at 921.

49. See, e.g., LEIBOWITZ, *supra* note 3, at 488 (describing the United State's role as administrator of the Trust). Cf. Alex Tallchief Skibine, *Reconciling Federal and State Power Inside Indian Reservations with the Right Of Tribal Self-Government and the Process of Self-Determination*, 1995 UTAH L. REV. 1105, 1114-16 (1995) (summarizing the history of the Trust Territory and analogizing it to the International Trust of Indian Nations).

50. See McHENRY, *supra* note 23, at 7; LEIBOWITZ, *supra* note 3, at 489.

51. See McHENRY, *supra* note 23, at 7.

gan to entertain prospects for self-determination.⁵² This eventually led to the formation of the Congress of Micronesia.⁵³

The Congress of Micronesia petitioned the United States to help promote self-determination in Micronesia.⁵⁴ Although it is unclear what prompted the territories to begin negotiations for self-determination, it may have been because they were increasingly dissatisfied with United States' administration of the Islands.⁵⁵ The Micronesian Legislature implemented its own commission, known as the Micronesian Political Status Commission, to undertake negotiations with the United States.⁵⁶

The Commission set out four important principles to guide the negotiations.⁵⁷ First, sovereignty must lie with the Micronesian people and their government.⁵⁸ Second, Micronesians should possess the right to self-determination and be able to select either independence or self-government.⁵⁹ Third, the Micronesians should adopt their own constitution and retain the option to change or amend it at all times.⁶⁰ Finally, "free association" should be in the form of a revocable compact that may be terminated by either party.⁶¹

In September of 1969, negotiations between the United States and the Micronesians commenced, but substantial disagreements slowed the pro-

52. See LEIBOWITZ, *supra* note 3, at 500; McHENRY, *supra* note 23, at 7; Hinck, *supra* note 37, at 921.

53. See LEIBOWITZ, *supra* note 3, at 500; McHENRY, *supra* note 23, at 7; *see also* Hinck, *supra* note 37, at 921 (intimating that the slow economic progress may have persuaded the Micronesians to seek steps toward self-determination).

54. See, e.g., Bergsman, *supra* note 9, at 397 (citing to Department of Interior Order No. 2882, Sept. 28, 1964) (stating that the United States set up the Congress of Micronesia to afford the trust territory with some amount of local government); Hinck, *supra* note 37, at 921.

55. See LEIBOWITZ, *supra* note 3, at 500 (explaining that the limitations on the Congress of Micronesia's legislative role upset the Micronesian leaders).

56. See McHENRY, *supra* note 23, at 89.

57. See Hinck, *supra* note 37, at 922 (analyzing the goals of the Micronesians during the negotiations for self-determination).

58. See, e.g., D. Michael Green, *Termination of the U.S. Pacific Islands Trusteeship*, 9 TEXAS INT'L L.J. 175, 177 (1974); Hinck, *supra* note 37, at 922 (citing to Armstrong, *The Emergence of the Micronesians Into the International Community: A Study of the Creation of a New International Entity*, 5 BROOKLYN J. INT'L. L. 207, 215 n.27 (1979)).

59. See, e.g., Green, *supra* note 58; Hinck, *supra* note 37, at 922 (citing to Armstrong, *The Emergence of the Micronesians Into the International Community: A Study of the Creation of a New International Entity*, 5 BROOKLYN J. INT'L. L. 207, 215 n.27 (1979)).

60. See, e.g., Green, *supra* note 58; Hinck, *supra* note 37, at 922 (citing to Armstrong, *The Emergence of the Micronesians Into the International Community: A Study of the Creation of a New International Entity*, 5 BROOKLYN J. INT'L. L. 207, 215 n.27 (1979)).

61. See, e.g., Green, *supra* note 58; Hinck, *supra* note 37, at 922 (citing to Armstrong, *The Emergence of the Micronesians Into the International Community: A Study of the Creation of a New International Entity*, 5 BROOKLYN J. INT'L. L. 207, 215 n.27 (1979)).

cess.⁶² The Micronesians desired to retain complete control of their land, with United States military use of land being possible only after government-to-government negotiations.⁶³ In addition, the United States' position included the retention of the power of eminent domain over Micronesian land.⁶⁴ Micronesia's desire to retain autonomy over their land made the United States position clearly untenable.⁶⁵

In the 1970s, the Northern Mariana Islands broke away from these negotiations and formed the Marianas Political Status Commission (MPSC) to forge a closer relationship between the U.S. and the Islanders.⁶⁶ The Northern Mariana Islands' motives for breaking away from the Commission remain unclear. Perhaps they broke away from the Congress of Micronesia because the Islands in Micronesia never had any national or territorial integrity.⁶⁷ In addition, the Micronesians are ethnically and linguistically diverse.⁶⁸ Although the Islands are geographically close, each district or entity (e.g., Truk, the Northern Marianas, and Palau) speaks a different language and has its own unique culture.⁶⁹ Another possible motive for breaking away from the MPSC was the Islands' concern that the more populated Islands of the MPSC would financially burden it.⁷⁰ The Northern Mariana Islands would be required to pay a disproportionate share of taxes that would benefit the more populated districts of Micronesia.⁷¹

62. See LEIBOWITZ, *supra* note 3, at 642; Green, *supra* note 58, at 179-80 (stating that negotiations between the United States and the Congress of Micronesia stalled).

63. See Leibowitz, *supra* note 3, at 642; Hinck, *supra* note 37, at 922 (explaining the Islands' desire for more control over its government).

64. See LEIBOWITZ, *supra* note 3, at 642; Hinck, *supra* note 37, at 922.

65. See LEIBOWITZ, *supra* note 3, at 642; Hinck, *supra* note 37, at 922.

66. See *United States ex rel. v. De Leon Guerrero*, No. 92-00001, 1992 WL 321010 at *27 (D.N.Mar.I., July 24, 1992), *aff'd*, 4 F.3d 749 (9th Cir. 1993) [hereinafter *Guerrero I*]; Marianas Political Status Negotiations, Opening Round, *supra* note 1; LEIBOWITZ, *supra* note 3, at 501; King, *supra* note 2, at 483-84.

67. See LEIBOWITZ, *supra* note 3, at 503; see also Leon R. Erstad, Comment, *International Law and Dependent Territories: The Case of Micronesia*, 50 TEMPLE L.Q. 58, 60 (1976) (claiming the United States, in its role as administering authority of the islands, should put the interest of the territories first by promoting self-government).

68. See LEIBOWITZ, *supra* note 3, at 503. The Islands have a distinct origin of the various island natives. See *id.* at 484. For example, the Marshall Island natives migrated from Southeast Asia while the Northern Mariana Islanders may have migrated from Melanesia. See *Id.*

69. See *id.* (stating that the natives of the Northern Mariana Islands are not identical to the Marshallese nor are the Marshall natives identical to the inhabitants of the island of Yap or Ponape).

70. See *id.* at 483 (noting that the island of Truk, whose population accounts for 28% of Micronesians, is the most populated of the territories).

71. See *id.* at 504.

Pre-covenant negotiations between the United States and the Northern Mariana Islands continued until 1978.⁷² The people of the Northern Mariana Islands conducted a plebiscite⁷³ which indicated that an overwhelming majority desired to become a part of the United States.⁷⁴ This plebiscite, however, was strongly criticized by the Congress of Micronesia and the United Nations.⁷⁵ The Congress of Micronesia was outraged at the negotiations between the United States and the Northern Mariana Islands, and did not endorse the separate talks.⁷⁶ The United Nations accused the United States of encouraging a "separatist movement" in the Northern Marianas.⁷⁷ Furthermore, they refused to endorse the Covenant because it was an improper method to terminate the trusteeship and it was overly advantageous to the United States.⁷⁸

Other critics of the plebiscite argued that it was arranged in a manipulative manner by permitting only a "yes" or "no" answer to the Cove-

72. See E-mail from Ramon G. Villagomez, Former Associate Supreme Court Justice, Commonwealth of the Northern Mariana Islands, to Marie Rios Martinez, Staff Writer, The Scholar: St. Mary's Law Review on Minority Issues (Jan. 15, 2000) (on file with author) (stating that Covenant negotiations ended in 1974; the plebiscite was held in 1975; and, the Northern Mariana Islands government was installed in January, 1978); See, e.g., Robert Torres, Comment, *Ferreira v. Borja: Land Transactions in the Northern Marianas*, 29 NEW ENG. L. REV. 209, 210-13 (1994).

73. See BLACK'S LAW DICTIONARY 1153 (6th ed. 1990) (defining plebiscite as people voting "to express their choice for or against a proposed law, enactment, submitted to them, and which, if adopted, will work a change in the constitution, or which is beyond the powers of the regular legislative body"); see also Naomi Hirayasu, *The Process of Self-Determination and Micronesia's Future Political Status Under International Law*, 9 U. HAW. L. REV. 487, 505 (1987) (describing the Northern Mariana plebiscite).

74. See *Guerrero I*, 1992 WL 321010, at *6 (asserting that 78% of registered voters, voted in favor of the Covenant); see also LEIBOWITZ, *supra* note 3, at 505 (describing the Northern Mariana Islands plebiscite process and its results).

75. See LEIBOWITZ, *supra* note 3, at 496 (expressing the United Nations disappointment of United States actions to establish a political relationship with the Northern Mariana Islands).

76. See *id.* at 501-02. The separate negotiations between the United States and the Northern Mariana Islands infuriated members of the Congress of Micronesia who criticized the move by issuing a "harshly worded resolution" condemning the United States' actions. See *id.* In that resolution, the Congress of Micronesia stated that the United States disregarded the recommendations of the United Nations Trusteeship Council during its 1973 Visiting Mission. See *id.* The United States separate administration of any part of Micronesia without a referendum violated its obligation as administering authority. See *id.*

77. See *id.* at 496. See generally Larry Wentworth, *The International Status and Personality of Micronesian Political Entities*, 16 ILSA J. INT'L L. 1 (analyzing the political evolution of the Trust Territory); Ruth Gordon, *Saving Failed States: Sometimes a Neocolonialist Notion*, 12 AM. U. J. INT'L L. & POL'Y 903, 923 (1997).

78. See Bergsman, *supra* note 9, at 385. The United Nations were actually excluded from partaking in the Covenant negotiations, in direct contradiction to the requirements if the United Nations Charter. See *id.* at 396-397.

nant.⁷⁹ These critics maintained that the plebiscite did not permit free expression for the people of the Northern Mariana Islands because the United States offered continued, large-scale aid to the Islands in exchange for a "yes" vote.⁸⁰ In addition, the "no" vote would have implied endorsement of trust status.⁸¹

The stern criticisms of both the United Nations and the Micronesian Congress failed to thwart efforts towards establishing a Covenant between the United States and the Northern Mariana Islands. The Northern Mariana Islands ultimately formed a Covenant with the United States in January of 1975.⁸²

III. THE COVENANT'S FUNDAMENTAL PROVISIONS

A. *Sovereignty and The Right To Local Self-Government*

Because United States sovereignty over the Commonwealth of the Northern Mariana Islands (CNMI) arises solely from the Covenant,⁸³ it is crucial to examine the Covenant's provisions. The Covenant is divided into ten main articles that define the political relationship between the CNMI and the United States.⁸⁴ Since its enactment, three fundamental

79. *See id.* at 404 n.97 (criticizing the plebiscite for not providing alternatives to the Islanders).

80. *See id.* at 405 n.101. Bergsman advances that Northern Mariana Islands' dependency on United States was not accidental. *See id.* A secret study done by the Kennedy administration recommended the United States could gain control of Micronesia if congressional grants were provided to the people. *See id.* The study also encouraged the United States to educate the people in American ways and then conduct a plebiscite while Micronesia's appreciation of United States' generosity was high. *See id.*

81. *Id.* at 403. The Islands were made to elect between a new status that presented rights to citizenship or a trusteeship with no rights to citizenship. *See id.*

82. *See, e.g.,* Proclamation No. 4534, 42 Fed. Reg. 56593 (Oct. 24, 1977), reprinted in 48 U.S.C.A. § 1801 (West Supp. 2000).

83. *See* Covenant to Establish a Commonwealth of the Northern Mariana Islands, 48 U.S.C.A. § 1801, art. I, § 102 (West Supp. 2000); Justice Ramon G. Villagomez, Address at the 1994 Conference on U.S. Federal-Insular Areas Relation (May 26, 1994).

84. *See id.* § 1801 art. I-X. Article I establishes the political relationship between the Islands and the United States. *See id.* Article I also provides the Islands shall have a right to local self-government. *See id.* Article II requires the Islands to establish a democratic form of government and models the United States Constitution. *See id.* Article III confers United States citizenship on the people of the Northern Mariana Islands. *See id.* Article IV discusses the judicial system of the Northern Mariana Islands and also describes the judicial relationship between the United States and the Northern Marianas. *See id.* Article V stipulates that only certain provisions of the United States Constitution will apply to the Northern Marianas. *See id.* Article VI provides that the Northern Mariana Islands will have local control over its tax law. *See id.* Article VII sets out a timeline for the type and amount of financial assistance the Northern Mariana Islands will receive from the United States. *See id.* Article VIII provides that in order to protect the indigenous population against exploitation, the Northern Mariana Islands may restrict the alienation of certain

provisions under Article I continue to cause on-going debate: section 101, section 103, and section 105.⁸⁵ Section 101 of the Covenant states "the Northern Mariana Islands will become a *self-governing* commonwealth . . . in political union with and *under the sovereignty* of the United States."⁸⁶ Compounding what has proven to be a contentious position, section 103 additionally provides that the Islands have the right of local self-government in accordance with their own laws.⁸⁷

Due to this facially incongruent position, the CNMI and the United States disagree as to the amount of sovereignty signed over to the United States by the Islands at the time they entered into the covenant.⁸⁸ The fact that the Islands would be under the sovereignty of the United States is clear if one reads only section 101.⁸⁹ It is also equally clear that section 103 specifically provides the people of the CNMI the right of local self-government in accordance with a Constitution of their own adoption.⁹⁰ However, because the Covenant is silent as to whether or not the United States retains full or limited sovereignty over the CNMI, the degree of sovereignty depends on whether or not the sovereignty provision of section 101 is read together with the right to self-government provision of section 103.⁹¹

The extent of United States sovereignty to enact legislation over the CNMI has also caused confusion in the courts.⁹² In *U.S. ex rel. Richards v. De Leon Guerrero*,⁹³ the district court of the CNMI held that the United States could impose legislation over the Islands via the Territory

interests in real property to those of Northern Mariana Islands descent. *See id.* In addition, the Northern Mariana Islands agreed to lease property to the United States for military purposes at \$1.00 per acre. *See id.* Article IX provides a representative for the Northern Mariana Islands to the United States. *See id.* Article IX also stipulates that Northern Mariana Islands and the United States will consult on a regular basis on all matters affecting their political relationship. *See id.* Article X addresses the approval, effective dates, definition of the Covenant, and provides that upon the President's issuance of the proclamation announcing the termination of the trusteeship agreement, the Northern Mariana Islands will become a Commonwealth. *See id.*

85. *See id.* § 1801, art. I § 101-105.

86. *Id.* § 1801, art. I § 101 (emphasis added).

87. *See id.* § 1801, art. I § 103.

88. *See* Justice Ramon G. Villagomez, *supra* note 11.

89. *See* *Hearing on H.J. Res. 549, H.J. Res. 550, and H.J. Res. 547, supra* note 7.

90. *See* Covenant to Establish a Commonwealth of the Northern Mariana Islands, 48 U.S.C.A. § 1801, art. I, § 103 (West Supp. 2000).

91. *United States ex rel. Richards v. De Leon Guerrero*, 4 F.3d 749, 753-55 (9th Cir. 1993)[hereinafter *Guerrero II*]. *See also* Herald, *supra* note 29, at 134-37.

92. *See, e.g., Guerrero II*, 4 F.3d at 755; *Sablan v. Inos*, 3 N.M.I. 418, No. 91-734, 91-018, 1993 WL 307656 (N. Mar. I) (Jan. 21, 1993).

93. *See Guerrero I*, 1992 WL 321010.

Clause of the United States Constitution.⁹⁴ On appeal, however, the Ninth Circuit declared that the Territorial Clause was not, in fact, the source of Congress' legislative power over the CNMI.⁹⁵

In *Guerrero*, the Department of Interior subpoenaed tax records of the CNMI to determine whether the Islands established a tax system to assess and collect the income tax imposed.⁹⁶ The district court held that the CNMI was not a sovereign state.⁹⁷ In addition, the court stated that the CNMI could not have equal sovereignty with the United States nor did they exist under dual sovereignty with the United States.⁹⁸ The court noted that the Islands do not possess equal sovereignty with the United States because it surrendered sovereignty as stipulated under section 101 of the Covenant.⁹⁹ A sovereign state is one that has the power of self-government, the court noted, and is independent from all other states.¹⁰⁰ The rationale employed by the district court suggested that the CNMI did not contemplate complete sovereignty because rather than choosing to be in free association¹⁰¹ with the United States, the Islands elected to be in a "political union with [and under the] sovereignty of the United States."¹⁰²

Furthermore, the court asserted that if the CNMI had any sovereignty, this sovereignty was "clipped" rather than complete.¹⁰³ The court found that the Islands relinquished primary sovereignty to the United States,

94. See *id.*, at *37 (finding that the territorial clause provides the constitutional basis for Congress' legislative authority in the Commonwealth)

95. See *Guerrero II*, 4 F.3d at 754. The *Guerrero II* Court stated that the Covenant is sole measure of the limits of Congress' legislative powers. See *id.* The territorial clause cannot apply to the Northern Mariana Islands because 501 of the Covenant lists the parts of the United States Constitution that extend to the Islands and the territorial clause is not one of them. See King, *supra* note 2, at 180. To apply the territorial clause would circumvent the Covenant's provisions and the fact the status of the Islands was negotiated and not the product of conquest. See *id.*

96. See *Guerrero I*, 1992 WL 321010, at *1-2.

97. See *id.* at *34.

98. See *id.* at *22; see also BLACK'S LAW DICTIONARY 1396 (6th ed. 1990) (defining sovereignty as "the supreme, absolute, and uncontrollable power by which any independent state is governed").

99. See *Guerrero I*, 1992 WL 321010, at *35.

100. See *id.* at *34.

101. See LEIBOWITZ, *supra* note 3, at 641-42. Leibowitz defines "free association" as a status in which a state chooses to be independent and have the option to associate freely with other states. See *id.* Thus, a freely associated state has the following elements: the unilateral ability to end the relationship with another state; the lack of U.S. citizenship for the residents; the capacity to engage in world affairs as an international sovereign with limited restraint; and finally, the capacity to have their own monetary system. See *id.* at 44.

102. See *Guerrero I*, 1992 WL 321010, at *35.

103. See *Guerrero I*, 1992 WL 321010, at *34-35. The Court inferred the notion of "clipped sovereignty" to mean incomplete sovereignty. See *id.* In contrast, full sovereignty means that states have "the entire power of self-government" independent from all the

therefore they had a sovereignty comparable but less than the states.¹⁰⁴ Furthermore, the court seemed to imply that this clipped sovereignty limited the Islands' right to local self-government.¹⁰⁵

In his speech at the 1994 Conference on U.S. Federal Insular Areas Relations, former Supreme Court Associate Justice of the CNMI, Ramon G. Villagomez, addressed the Islands' position on the issue of United States sovereignty. According to Mr. Villagomez, the CNMI maintains that limited sovereignty was transferred to the United States in the areas of foreign affairs and defense.¹⁰⁶ Moreover, the CNMI asserts that the Islands retained any sovereignty not expressly transferred in the Covenant.¹⁰⁷

Indeed, the Covenant's provisions state that the United States has sovereignty over the Islands but that this sovereignty is limited to the extent set out in section 103.¹⁰⁸ This section provides that the CNMI would be self-governing in their internal affairs.¹⁰⁹ If the sovereignty provision takes precedence over the right to local self-government, other fundamental provisions of the Covenant are rendered meaningless, as it would give the United States overreaching authority over the Islands. By exercising complete sovereignty over the Islands without allowing the CNMI a voting member in Congress, the United States is in effect promoting congressional colonialism over the Northern Mariana Islands.

B. *The Mutual Consent Provision*

The authority of the United States to enact legislation over the Islands continues to be a matter of disagreement.¹¹⁰ Both the courts and Congress have addressed whether Section 105, also known as the mutual consent provision, limits the United States' power to enact legislation affecting the Islands.¹¹¹

other states upon its territory and citizens and that "no foreign power can have control over the state except by convention." *Id.*

104. *See id.* at *35.

105. *See id.* at *34.

106. *See* Justice Ramon G. Villagomez, *supra* note 11.

107. *See id.*

108. *See* Covenant to Establish a Commonwealth of the Northern Mariana Islands, 48 U.S.C.A. § 1801, art. I, § 103 (West Supp. 2000).

109. *See id.*

110. *See, e.g., Guerrero II*, 4 F.3d at 755; *Hillblom v. United States*, 896 F.2d 426, 429-30 (9th Cir. 1990); *A&E Pac. Constr. Co. v. Saipan Stevedore Co.*, 888 F.2d 68, 70-71 (9th Cir. 1990).

111. *See* Justice Ramon G. Villagomez, *supra* note 11. Justice Villagomez points out that Congress adopts the opinion that it can enact laws incompatible with Section 105, while the Islands believe that this section explicitly restricts the authority of Congress to pass legislation. *See id.*

The mutual consent principle under section 105 of the Covenant is simple: the fundamental provisions of the Covenant may not be modified without the approval of both the United States and the CNMI.¹¹² However, section 105 of the Covenant also provides that the United States may enact legislation affecting the Islands' right to local self-government with two stipulations.¹¹³ First, the United States cannot enact legislation over the Islands unless the legislation also applies to the several States.¹¹⁴ Second, the United States will limit its legislative authority over the Islands to ensure that the Covenant's fundamental provisions are not modified without the consent of both the United States and the Islands.¹¹⁵ However, to effectuate the true meaning of the Covenant, the mutual consent provision and the right to local self-government must be read together. By reading these two provisions together, the United States' sovereignty over the Islands remains limited by the CNMI's right to local self-government.

The basis for the Covenant's mutual consent provision lies in the history of the Islands' acquisition by the United States. The Islands did not become a Commonwealth of the United States under a treaty, as did the Commonwealths of Puerto Rico and Guam.¹¹⁶ Instead, the Islands' status as a "Commonwealth" was reached through negotiations with the United States.¹¹⁷ Pursuant to these negotiations, Congress agreed not to alter the Covenant's fundamental purpose unilaterally.¹¹⁸ The Islands decided that the commonwealth relationship provided assurances of local

112. See *Covenant to Establish Commonwealth of the Northern Mariana Islands*, 48 U.S.C.A. § 1801, art. I, § 105 (West Supp. 2000); *Guerrero II*, 4 F.3d at 755; see also *Hearing on H.J. Res. 549, H.J. Res. 550, and H.J. Res. 547, supra* note 7 (affirming that the mutual consent provision protects the Islands from alteration to their right to self-government, and their political relationship with the United States); *Herald, supra* note 29, at 136-37.

113. See *Covenant to Establish Commonwealth of the Northern Mariana Islands*, 48 U.S.C.A. § 1801, art. I, § 105 (West Supp. 2000); *Hearing on H.J. Res. 549, H.J. Res. 550, and H.J. Res. 547, supra* note 7.

114. See, e.g., *Covenant to Establish a Commonwealth of the Northern Mariana Islands*, 48 U.S.C.A. § 1801, art. I, § 105 (West Supp. 2000); *Guerrero II*, 4 F.3d at 753; *Hearing on H.J. Res. 549, H.J. Res. 550, and H.J. Res. 547, supra* note 7.

115. See *Covenant to Establish Commonwealth of the Northern Mariana Islands*, 48 U.S.C.A. § 1801, art. I § 105 (West Supp. 2000); see also Jennifer Davis, Comment, *Beneath the American Flag: United States Law and International Principles Governing the Covenant Between the United States and Commonwealth of the Northern Mariana Islands*, 13 TRANS-NAT'L LAW 135, 143 (2000).

116. See *Hearing on H.J. Res. 549, H.J. Res. 550, and H.J. Res. 547, supra* note 7 (stating that the term 'commonwealth' for the Islands does not convey the equivalent status held by the Commonwealth of Puerto Rico).

117. See *id.* See also Davis, *supra* note 115, at 142.

118. *To Hearing on H.J. Res. 549, H.J. Res. 550, and H.J. Res. 547, supra* note 7; Davis, *supra* note 115, at 143.

self-government and a permanent political union with the United States.¹¹⁹ Consequently, the mutual consent provision specifically names the sections of the United States constitution that apply to the Islands; therefore, any other laws would have to be mutually agreed to by both parties.¹²⁰

1. Judicial Interpretation

Several cases have addressed the United States authority to enact and impose legislation over the CNMI.¹²¹ *U.S. ex rel. Richards v. De Leon Guerrero* and *Sablan v. Inos*¹²² illustrate the difficulty in defining the Covenant's boundaries between the Islands' right to local self-government and the United States' authority to impose federal regulations.¹²³

In *Sablan v. Inos*, two local taxpayers sought an injunction to prevent the Islands' government from disclosing their taxpayer information to the United States Interior Department's Inspector General.¹²⁴ The CNMI's Supreme Court issued a temporary injunction prohibiting the release of tax information to anyone not authorized under the Northern Mariana Islands' statute.¹²⁵ Eventually, the Islands' highest court held that the audit on local taxpayer records would intrude upon the taxpayers' right to privacy under the CNMI's Constitution and under the Islands' tax confidentiality provision.¹²⁶ The CNMI's Supreme Court in *Sablan* further held that the Inspector General's audit would be inconsistent with the Islands' right to local self-government.¹²⁷ The Court held that the statute authorizing the Inspector General to audit local tax records had no "force and effect" in the Islands.¹²⁸

As noted, the issue in *Guerrero* concerned the power of the Inspector General of the United States Department of the Interior to request copies of the Islands' local tax records.¹²⁹ The district court in *Guerrero* enforced an administrative subpoena ordering the local government to

119. See *Hearing on H.J. Res. 549, H.J. Res. 550, and H.J. Res. 547, supra* note 7.

120. See *King, supra* note 2, at 497.

121. See, e.g., *Guerrero II*, 4 F.3d at 428-29 (discussing whether citizens of Northern Mariana Islands have standing to sue to prevent enactment or enforcement of United States laws contradictory to the Covenant); *A&E Pac. Constr. Co.*, 888 F.2d at 70-71 (discussing whether the Shipping Act of 1984 applies to the Islands).

122. See *Sablan*, 1993 WL 307656 at *3-4.

123. See *id.* See also *Guerrero II*, 4 F.3d at 753-55.

124. See *Sablan*, 1993 WL 307656, at *1-2.

125. See *id.* at *6.

126. See *id.* at *5-6. *Accord Guerrero II*, 4 F.3d at 752.

127. See *Sablan*, 1993 WL 3-7656 at *6.

128. See *id.* *Accord Guerrero II*, 4 F.3d at 752.

129. See *Guerrero II*, 4 F.3d at 752.

release tax records in order to conduct an audit.¹³⁰ The government of the CNMI, relying on the Islands' Supreme Court decision in *Sablan v. Inos*, refused to grant the Inspector General the records necessary to conduct the audit.¹³¹ The government was concerned that the audit violated the Islands' right to local self-government.¹³²

On appeal, the Ninth Circuit ignored the ruling of the Islands' highest court. The Ninth Circuit balanced the federal interest served by the legislation against the degree of intrusion into the internal affairs of the CNMI.¹³³ The court held that the statute authorizing the Inspector General's right to audit local tax records did not violate the Islands' right to local self-government.¹³⁴ The court based this holding on the United States' substantial interest in monitoring the Islands' collection of taxes.¹³⁵

In essence, the Ninth Circuit's holding gives the United States broad power to examine all tax records for the CNMI. Yet, less restrictive means were available to the United States that would have enabled them to monitor the federal funds. Instead, however, the Ninth Circuit upheld this broad intrusion into the affairs of the people of the CNMI.

2. Effects of Judicial Interpretation

The holding in *Guerrero* violates the Islands' right to local self-government and renders the Covenant's mutual consent provision meaningless. If Congress can alter the Covenant's provisions because of United States aid to the CNMI, then it stands to reason that the court and Congress can use virtually any justification to alter the Covenant's provisions. The Ninth Circuit stipulated that the federal interest (i.e., federal control of financial assistance to the Islands) must be protected.¹³⁶ However, it neglected to address the rights of the citizens of the CNMI. It is for this reason that the limits of United States sovereignty, and conversely, the Islands' right to local self-government, must be clarified. The United States does not hold unfettered discretion over the Islands. By exercising such discretion, the United States is effectively practicing congressional colonialism.

130. *See id.*

131. *See id.*

132. *See id.*

133. *See id.* at 755.

134. *See id.* (finding that it was necessary to balance the federal interest against the degree of intrusion).

135. *Id.*

136. *See id.* (finding that the United States had a significant concern in checking that the federal funds were being used properly in the Islands).

As it is currently interpreted, the mutual consent provision is a one-sided agreement through which the Islands have effectively "self-determined" their way into bondage.¹³⁷ The mutual consent provision under section 105 of the Covenant has, in essence, locked the CNMI into the American political system with only one way to get out: obtaining the approval of the United States.¹³⁸ This requirement violates the Covenant's mutual consent provision under section 105 because it is no longer mutual but unilateral.

IV. CONGRESSIONAL COLONIALISM DISGUISED AS DEMOCRACY

The United States' relationship with other indigenous peoples has been historically antagonistic. This is due to the mistaken presumption that indigenous peoples will benefit from the imposition of American principles.¹³⁹ For example, when the United States invaded Puerto Rico, General Miles, who organized the invasion, declared, "this is not a war of devastation, but one to give to all within the control of its military and naval forces the advantages and blessings of enlightened civilization."¹⁴⁰ The same sentiment was conveyed when the Native Americans were displaced from their land and the Native Hawai'ians were colonized by the United States.

A. *Native Americans*

In the name of territorial expansion, the United States government did everything in their power to secure the land of the Native Americans.¹⁴¹ Government negotiators coerced Native American leaders to sign a number of treaties that not only diminished their land but also undermined

137. See Bergsman, *supra* note 9, at 407 (criticizing the mutual consent language of the Covenant because there is no way for Islands to opt out unilaterally).

138. See *id.*

139. See José Trías Monge, Article, *Plenary Power and the Principle of Liberty: An Alternative View of the Political Condition of Puerto Rico*, 68A REV. JUR. U.P.R. 1, 1-6 (1999) (pointing out the assumption that United States' administration of others is a privilege to those governed).

140. See Arron Guevara, *Puerto Rico: Manifestations of Colonialism*, 26 REV. JUR. U.P.R. 275, 283 (1992). There seems to be an attitude that Puerto Rico has no right to self-government. See *id.* In criticizing Puerto Rico's Constitution, Senator Mahoney who is the Chairman of the Senate Committee on Interior and Insular Affairs stated: "I think it may be stated as fundamental that the Constitution of the United States gives the Congress complete control and nothing in the Puerto Rican constitution could affect or amend or alter that right. That constitution is before us and I find nothing in it which goes beyond the scope of local self-government which we by law expressly authorized." *Id.* at 283.

141. See ALVIN M. JOSEPHY, JR., 500 NATION: AN ILLUSTRATED HISTORY OF NORTH AMERICAN INDIANS 277 (Alfred A. Knopf ed., 1994).

their sovereignty.¹⁴² During the westward expansion of the United States and the subsequent displacement of Native Americans, Thomas Jefferson Morgan, Commissioner of Indian Affairs, stated:

The Indians must conform to 'the white man's ways,' peaceably if they will, forcibly if they must. They must . . . conform their mode of living substantially to our civilization. This civilization may not be the best possible, but it is the best the Indians can get. They can not escape it, and must either conform to it or be crushed by it. . . .¹⁴³

Years later, the Indian Self-Determination Act¹⁴⁴ served to perpetuate the effects of congressional colonialism. The Act purported to give Native Americans the inherent right to self-determination.¹⁴⁵ Congress interpreted the Act, however, to provide that Native Americans could exert limited participation in their affairs, but could not exert full control.¹⁴⁶ The Act obscurely promised both self-determination and limited participation, an ambiguity that was also created in the Covenant with the Northern Mariana Islands.¹⁴⁷

B. *Native Hawai'ians*

Afraid that another nation would take control of the Hawai'ian islands due to their strategic location, the United States forced King Kalakaua to sign the Bayonet Constitution, which reduced the King's power to that of a ceremonial leader and created a cabinet made up of American and Brit-

142. *See id.*

143. *See id.* at 431-32. The Native American culture changed when they were taught to abandon their way of life and adopt American ways. *See id.* In 1492, Columbus "discovered" what he called "los indios" and opened the gateway to the "discovery" of the Native Americans and the disenfranchisement of their societies. *See id.* at 115. It was not until the European expansionism that the Native Americans encountered the English who sought settlements for profit. *See id.* During their displacement, Native Americans, became strangers in their own land. *See id.* The Native Americans' way of life, such as hunting and fishing, perished as they became assimilated. *See id.* Children were sent to boarding schools to learn the arts and the proper ways of the whites. *See id.* at 432.

144. *See* Indian Self Determination Act, 25 U.S.C.A. § 450 (West Supp. 2000) (authorizing Indian self-determination through maximum participation in education and other federal programs).

145. *See id.* *See also* Markus B. Heyder, Note, *The International Law Commission's Draft Articles on State Responsibility: Draft Article 19 and Native American Self-Determination*, 32 COLUM. J. TRANSNAT'L L. 155, 174-75 (1994).

146. *See* Heyder, *supra* note 145. Although the Act establishes a promise to establish meaningful Indian self-determination policy, it provides them with limited forms of self-determination and self-government. *See id.*

147. *See, e.g.,* Indian Self Determination Act, 25 U.S.C.A. § 450 (West Supp. 2000); Covenant to Establish Commonwealth of the Northern Mariana Islands, 48 U.S.C.A. § 1801, art. I § 105 (West Supp. 2000).

ish businessmen.¹⁴⁸ After the King's death, the United States plotted the overthrow of Queen Lili'uokalani, who would not yield to American interest.¹⁴⁹ Under a provisional government, the United States secured a resolution that successfully furthered American interest at the expense of the Native Hawai'ians.¹⁵⁰

As with Hawaii, the strategic location of the Northern Mariana Islands prompted United States negotiations to form a political union with Northern Mariana Islands. As administrator of the Islands under the Trust Territory, the United States violated its role as trustee of the Islands. The United States, in looking out for its own self-interest, initially encouraged the Islands to exercise their right of self-determination, and then conditioned that right by requiring the Islands to cede their sovereignty to the United States.

Under the status of trustee, the United States would have been instrumental in encouraging the Islands to establish a democratic form of government.¹⁵¹ Even though an overwhelming majority of the Islands' population voted to become part of the American political family, critics

148. See Lisa Cami Oshiro, Comment, *Recognizing Na Kanaka Maoli's Right to Self-Determination*, 25 N.M.L. REV. 65, 69 (1995). Oshiro notes that Senator Aaron Sargent of California viewed the treaty as a means to further American interests and encouraged Americans to go and make Hawaii an American colony. See *id.* American reformers handed King Kalakaua what is now known as the Bayonet Constitution, and gave him 24 hours to sign it. See *id.* To avoid a plot to assassinate him, King Kalakaua reluctantly signed the Constitution. *Id.* at 70.

149. See *id.* at 72. Under protest, Queen Lili'uokalani "abdicated her throne" to protect the Native Hawai'ans. See *id.* The provisional government knew that the Queen's weakness was the welfare and safety of her people. See *id.* Therefore, the provisional government threatened the people if Queen Lili'uokalani did not abdicate her throne. See *id.* at 73. The provisional government consisted of American and British businessmen who sought to annex Hawaii due to concern for Hawaii's relationship with other foreign countries and the desire to protect U.S. economic and military interests. After Queen Lili'uokalani was dethroned she wrote: "[I]t had not entered into our hearts to believe that these friends and allies from the United States . . . would ever go so far as to absolutely overthrow our form of government [and] seize our nation by the throat . . ." *Id.* at 72. Queen Lili'uokalani, however, refused to give up and traveled to Washington to plead with the President to give her back her throne. See *id.* at 73. However, the Queen's request went unheeded. See *id.* at 69. See also Taryn Ranae Tomasa, *Ho'olalui": The Rebirth of a Nation*, 5 ASIAN L.J. 247, 252-54 (1998) (describing the overthrowing of Queen Lili'uokalani's throne).

150. See Oshiro, *supra* note 148, at 74. After King Kalakaua's death, the Americans, with the support of United States Marines, set up a provisional government. See *id.* at 71.

151. See Camacho-Romisher, *supra* note 2 (indicating that the United States pledged to further the self-sufficiency of the inhabitants by encouraging self-government); King, *supra* note 2, at 480 (reiterating that the United States had the duty to further the advancement of the inhabitant toward self-determination or independence). See generally, LEBOWITZ, *supra* note 3, at 496 (describing the United Nations observations of conditions in Micronesia in 1961, while under the United States administration).

point out that there should have been a third choice on the ballot.¹⁵² One such critic points out that the ballot should have at least included the right to "free-association" as a third option.¹⁵³

Throughout Covenant negotiations, the Marianas Political Status Commission reiterated their desire to become a part of the United States, not only to ensure their freedom to "live as free men,"¹⁵⁴ but also to provide the Islands the freedom to determine their own destiny.¹⁵⁵ The Islands believed the United States would not take advantage of them:

We are not afraid of the possible abuse under such an arrangement with the United States . . . [w]e are satisfied that the United States Constitution offers us enough latitude to be able to protect our people . . . [n]either do we abrogate our rights to negotiate with the United States toward the most favorable resolution of our own position on such specific issues as they may arise.¹⁵⁶

However, the ideal political union the Islands envisioned was not actualized by the Covenant. On the contrary, although the Covenant explicitly acknowledged and bestowed the Islands with self-government, it also stated that they were under the sovereignty of the United States. The United States must not continue creating new forms of colonialism by camouflaging unequal relationships by denominating nations as "commonwealths"¹⁵⁷ or by giving the Islands the illusion of autonomy. In reality, the sovereignty provision of the Covenant is an effort by the United States to override any possibility of the Islands actually enjoying self-government. This ambiguity has allowed Congress to interpret the Covenant as allowing the enactment of federal legislation contrary to the self-government provision.

152. See Bergsman, *supra* note 9, at 407.

153. See *id.* Bergsman describes free-association as the freedom to modify the status of the territory in question. See *id.*

154. See Marianas Political Status Negotiations, Opening Round, *supra* note 1. In their Statement of Position, the citizens of the Northern Mariana Islands stated that "[f]or the first time in four centuries, the people of the Marianas now live as free men. Political union with the United States will ensure that we keep this freedom so long denied to us." *Id.*

155. See *id.*

156. *Id.* Mr. Edward Pangelinan addressed the United Nations Trusteeship Council Hearings in May, 1972. See *id.*

157. See Guevara, *supra* note 140, at 286-87 (criticizing the United States and Puerto Rican leaders for promoting a false sense of status by using words such as "union" or "federation" which camouflages unequal relationships under terms which have pleasant connotations).

V. BENEFIT OR BURDEN: EXAMINING THE EFFECTS OF THE COVENANT

Today, the relationship between the United States and the Islands is at best strained as the United States continues to exert its sovereignty. In 1997, Congress introduced Bill 1275, which sought to implement federal wage, labor, and tax laws on the CNMI.¹⁵⁸ Although Bill 1275 was not ratified as proposed, new legislation emerged from this bill, including the Covenant Implementation Act and the Made in USA Label Defense Act.¹⁵⁹ This present legislation seeks both to remove the Islands' local control of immigration law and to impose quotas and tariffs on garments made in the Islands.¹⁶⁰

A. *The Covenant Implementation Act*

By introducing the Covenant Implementation Act, the United States seeks to implement federal immigration laws on the Islands.¹⁶¹ The Act was introduced to address alleged labor abuses in the Islands.¹⁶² The abuses included reports of sweatshops and prostitution.¹⁶³ While the

158. See Position Paper, *supra* note 18.

159. See Northern Mariana Islands Covenant Implementation Act, S. 1052, 106th Cong. § 1(6)(1), WL 1999 CONG US S 1052; Made in USA Label Defense Act of 1999, S. 922, 106th Cong. § 7 (1999); Made in the USA Label Defense Act of 1999, HR 1621, 106th Cong. § 7-8 (1999); see also *Bill OK'd Extending Immigration Laws to Marianas*, CONG. DAILY AM., Oct. 21, 1999, 1999 WL 27685268.

160. Compare Northern Mariana Islands Covenant Implementation Act, S. 1052, 106th Cong. § 1(6)(1), WL 1999 CONG US S 1052 (indicating that United States Immigration and Nationality Act will be extend to the Islands), with Made in USA Label Defense Act of 1999, S. 922, 106th Cong. § 7 (1999), and Made in USA Label Defense Act of 1999, HR 1621, 106th Cong. § 7-8 (1999) (detailing that all products made in the Islands shall not be allow into the United States free of tariffs).

161. See Northern Mariana Islands Covenant Implementation Act, S. 1052, 106th Cong. § 1(6)(1), WL 1999 CONG US S 1052; see also Government Press Release, Daniel Kahikana Akada, Senate Passes CNMI Reform Bill (Feb. 7, 2000), available at 2000 WL 7978379 (stating that the Northern Mariana Islands Covenant Implementation Act was introduced 1999, passed the Senate in February 2000, and is currently awaiting further action in the House of Representatives).

162. See Akada, *supra* note 161 (detailing some of the abuses in the Islands like low-pay, tedious and long hours). See generally Editorial, *The Battle of the Marianas*, WASH. TIMES, Aug. 23, 1999, at A1; Aaron Schvey and Denise Froning, *Opinion: Will Congress Impose Tariffs on Its Own Citizens?*, KNIGHT-RIDDER TRIB. BUS. NEWS, Sept. 22, 2000, available at 2000 WL 26755333.

163. See generally Rose Cruz Cuison, Comment, *The Construction of Labor Abuse in the Mariana Islands as Anti-American*, 6 ASIAN PAC. AM. L.J. 61, at 63 (2000) (quoting 143 Cong Rec E888-02 (daily ed. May 8, 1997)). Cuison states that "[f]ederal lawmakers, advocates, human rights groups, and labor unions have uniformly maintained that the main cause of labor abuse in the [Northern Mariana Islands] is its exemption from federal minimum wage and immigration laws." *Id.* Several lawsuits have erupted on behalf of all for-

CNMI acknowledges that the accusations of labor abuses must be taken seriously and investigated without hesitation, they also maintain that the severity of these disputes remains open to debate.¹⁶⁴ Furthermore, the Islands claim that media and political sensationalism have presented a one-sided account.¹⁶⁵

Although the Islands were given an opportunity to testify before Congress concerning the Act,¹⁶⁶ the final draft of the bill reflected essentially a one-sided agreement.¹⁶⁷ If it is passed, the primary effect of the Act will be to gradually supplant CNMI labor and immigration laws with federal legislation over a ten-year period.¹⁶⁸

Currently, the CNMI retains local control over immigration, labor, and wage laws.¹⁶⁹ This control was specifically reserved to the Islands by the terms of the Covenant.¹⁷⁰ Although the Covenant provided that Congress could make federal immigration laws applicable to the CNMI,¹⁷¹ it

mer and current garment employees on the Islands. See Shawn Behn, *Lending U.S. Nothing Retailers Settle Sweatshops Claims in Saipan*, AGENCE FRANCE-PRESSE, Mar. 29, 2000, available at 2000 WL 2762667. Several large companies have settled the federal class-action lawsuit including Calvin Klein and Tommy Hilfiger. See *id.*

164. See Statement of Juan N. Babuta, *supra* note 16. Babuta asserted that it is not due to absence of federal law, workplace law, or commitment of the Islands' government that these conditions have come up. See *id.* See, e.g., Cuison, *supra* note 163, at 63. The author states that the discourse concerning abuses on the Islands does not take into account the Islands' history of colonialism, its struggle for self-government, or exercise of self-determination. See *id.* It also does not account for the effect of federalization on the Islands' economic and political development. See *id.* In addition, the current discourse concerning labor disputes does not address the federal government's poor enforcement of federal labor and employment laws, and the effect of Westernization on the Islands' culture. See *id.* at 79.

165. See Editorial, *supra* note 162 (finding that a four year plan to target the Islands included department employees feeding damaging information to the Democratic Congressional Campaign Committee).

166. See, e.g., Statement of Juan N. Babaut, *supra* note 16; Position Paper, *supra* note 18.

167. The Islands do not have a voting representative in Congress; therefore, their participation in the passage of the Covenant Implementation Act was marginal at best. See Schvey and Froning, *supra* note 162.

168. See Northern Mariana Islands Covenant Implementation Act, S. 1052, 106th Cong. (2000), WL 1999 CONG US S 1052; Akada, *supra* note 161; Juliet Eilperin, *Islands Rehire Lobbyist to Fight Labor Bill*, WASH. POST, Sept. 3, 2000, at A06; Schvey and Froning, *supra* note 162.

169. Schvey and Froning, *supra* note 162.

170. See *The Enforcement of Federal laws and the use of Federal funds in the Northern Mariana Islands: Oversight Hearing Before House Comm. On Resources*, 106th Cong. (1999) (Testimony of Lynn A. Knight, Vice President, Saipan Chamber of Commerce); Akada, *supra* note 161.

171. See Covenant to Establish a Commonwealth of the Northern Mariana Islands, 48 U.S.C.A. § 1801 art. V, § 503(a) (West 2000).

also specifically furnished the Islands with the right of local self-government and control of internal affairs.¹⁷²

The CNMI maintains that this arbitrary imposition of United States policy will have a disastrous effect on the Islands.¹⁷³ Specifically, the CNMI contends that the imposition of this Act will have adverse consequences on its fledgling economy.¹⁷⁴ The original decision to entrust the Islands with local control of immigration was the result of the Islands' unique economic situation.¹⁷⁵ The Islands' major businesses, such as hotels and service industries, are dependent on foreign labor.¹⁷⁶ Thus, the imposition of federal immigration laws will potentially leave the CNMI's labor market without enough manpower to fill entry-level service positions.¹⁷⁷ The continued success of these industries will therefore be jeopardized by a reduction in the local workforce.¹⁷⁸

172. *See id.* § 1801, art. I, § 103.

173. *See* Position Paper, *supra* note 18 (warning that the passage of the Implementation "would set back the economic clock of the Commonwealth"). *See also* CNMI cities Progress at Congressional Hearings. Rep Juan N. Babuta, Reporting from Wash. The Enforcement of Federal laws and the use of Federal funds in the Northern Mariana Islands: Oversight Hearing Before House Comm. On Resources, 106th Cong. (1999 (quoting Governor Tenorio, who stated that the bill would destroy the Islands economy and return them to an impoverished state); *See* Statement of Juan N. Babauta, *supra* note 16 (indicating that the passage of Senate Bill 1052 would abolish all local control of immigration decisions).

174. *See* Position Paper, *supra* note 18; CNMI cities Progress at Congressional Hearings. Rep Juan N. Babuta, Reporting from Wash. The Enforcement of Federal laws and the use of Federal funds in the Northern Mariana Islands: Oversight Hearing Before House Comm. On Resources, 106th Cong. (1999) (Testimony of Lynn A. Knight, Vice President, Saipan Chamber of Commerce). The economic development of the Islands has merely enhanced their quality of life. *See id.* Even today, the islands do not have fresh drinking water in every home and the sewer and power systems barely meet their demands. *See also* Davis, *supra* note 115, at 152 (stating that the imposition of the laws would wreak havoc on the economy).

175. *See* Position Paper, *supra* note 18.

176. *See* The Enforcement of Federal Laws and the Use of Federal Funds in the Northern Mariana Islands: Oversight Hearing Before House Comm. On Resources, 106th Cong. (1999) (Testimony of Lynn A. Knight, Vice President, Saipan Chamber of Commerce).

177. *See* Position Paper, *supra* note 18 (finding that the number of permanent citizen workers in the labor force are out numbered by foreign workers at a ratio of three to one); Northern Mariana Islands Covenant Implementation Act: Hearings on S. 1275 Before the Comm. On Energy and Natural Resources, 105th Cong. 105-201 (1998); Davis, *supra* note 115, at 152.

178. *See* Position Paper, *supra* note 18. According to the document, there is not enough "human or natural resources for economic self sufficiency" in the Islands. *See id.* Likewise, it would take the Commonwealth between 70 to 90 years to produce sufficient local workers to replace the current number of nonresident guest workers in the Commonwealth. *See id.* *See also* Davis, *supra* note 115, at 152.

B. *Made in USA Label Defense Act*

In addition to the Covenant Implementation Act, Congress has introduced the Made in USA Label Defense Act.¹⁷⁹ This legislation seeks to disallow the use of the 'Made in USA' label on products imported from the CNMI.¹⁸⁰ Furthermore, it proposes to increase tariffs on these products by eliminating duty free treatment in the fifty States.¹⁸¹ This legislation would be the first of its kind to impose a tariff on a United States territory.¹⁸² An analyst has likened this to placing an import tax on goods produced in Virginia or Indiana.¹⁸³

The American textile industry has subjected the legislation to an intensive lobbying effort.¹⁸⁴ The textile industries blame the imported products for a substantial loss of business.¹⁸⁵ Yet, these same textile industries have been accused of forging a smear campaign against the Islands because they want a portion of the CNMI's one billion dollars from garments sold in the United States.¹⁸⁶

Additionally, the CNMI's government lacks a representative in Washington to lobby on its behalf.¹⁸⁷ The CNMI claims that the Made in USA Label Defense Act will have a negative impact on their economy.¹⁸⁸ The

179. See S. 922, 106th Cong. (1999); H.R. 1621, 106th Cong. (1999); see also Government Press Release, *supra* note 15; Hall, *supra* note 17.

180. See S. 922, 106th Cong. (1999); H.R. 1621, 106th Cong. (1999); see also Government Press Release, *supra* note 15; Hall, *supra* note 17.

181. See S. 922, 106th Cong. (1999); H.R. 1621, 106th Cong. (1999); see also Government Press Release, *supra* note 15; Hall, *supra* note 17. The rationale behind the bill is that most of the workers in the factories are not American; therefore, they should have the privilege of using the label. See Deborah J. Karet, *Privatizing Law on the Commonwealth of the Northern Mariana Islands: Is litigation the Best Channel for Reforming the Garment Industry*, 48 BUFF. L. REV. 1047, 1091 (2000).

182. See Hall, *supra* note 17; Schvey and Froning, *supra* note 162.

183. See Schvey and Froning, *supra* note 162. The taxation of United States citizens violates the Fifth Amendment's provision that "no person shall . . . be deprived of life, liberty, or property, without due process of law." See U. S. CONST., amend. V.

184. See Hall, *supra* note 17.

185. See *id.*

186. See Eilperin, *supra* note 168. See generally Cuison, *supra* note 163, at 63. Congressman George Miller's statement to his colleagues on capitol hill states "the time has come to shut down these loopholes and the scam in Saipan. . . Companies are automating and moving operations searching for lower taxes, special exemptions and cheaper labor. . . these policies hurt America and its middle class." *Id.* The author points out that this statement does not refer to the economic success of the Northern Mariana Islands, but the economic losses to the United States and its middle class. See *id.* at 76.

187. See Hall, *supra* note 17.

188. Eilperin, *supra* note 168. See also Cuison, *supra* note 163, at 75. Congressman George Miller's statement to his colleagues on capitol hill states "the time has come to shut down these loopholes and the scam in Saipan. . . Companies are automating and moving operations searching for lower taxes, special exemptions and cheaper labor. . . these policies

Act's requirement that imports from the Islands be taxed like that of foreign imports forces manufacturers to go elsewhere. Thus, imposing import tariffs on local goods will increase unemployment and destroy the Islands' ability to remain self-sustaining.¹⁸⁹

Imposition of United States law on the Islands will not change the circumstances in the CNMI, due to the Islands' nominal land area, small local population, and geographic isolation. On the contrary, the legislation will have "a critical underpinning of [the Islands'] exercise of self-determination and self-government."¹⁹⁰ Because the CNMI does not have a voting member in Congress, the Act would impose taxation without representation.¹⁹¹

Although the CNMI admits there are problems with foreign labor, it asserts that the federal government has not made a sincere endeavor to aid in addressing the problem.¹⁹² When the Covenant was signed, the United States committed to directing the experiment of self-government.¹⁹³ Moreover, section 701 of the Covenant requires the United States to assist the government of the Islands with their development to self-determination.¹⁹⁴ The United States has failed to provide personnel or technical assistance to aid the CNMI effort.¹⁹⁵ The CNMI's maintains that the United States should aid in the development and implementation of local solutions to the Islands' local problems before imposing essentially foreign policies on the Islands' unique conditions.¹⁹⁶

VI. CLARIFYING THE COVENANT'S INTENT

Because the Covenant's fundamental provisions are unclear as to the extent of United States authority to enact legislation affecting the Islands, Congress should defer to the negotiating documents when contemplating legislation. During the Covenant's negotiations, the United States delegation, led by Ambassador F. Haydn Williams,¹⁹⁷ met with the Marianas Political Status Commission in order to negotiate the final terms of the

hurt America and its middle class." *Id.* The author points out that this statement does not refer to the economic success of the Northern Mariana Islands, but the economic losses to the United States and its middle class. *See id.* at 76.

189. *See* Position Paper, *supra* note 18; Schavey and Froning, *supra* note 162.

190. *See* Schavey and Froning, *supra* note 162.

191. *See id.*

192. *See* Position Paper, *supra* note 18.

193. *See id.*

194. *See id.*

195. *See id.*

196. *See id.*

197. Williams was appointed Ambassador by President Nixon on June 24, 1971. *See* McHENRY, *supra* note 23, at 103.

Covenant. The negotiating history of the Covenant includes transcripts of the hearings and meetings of the negotiations.¹⁹⁸

The transcripts, along with the Covenant, should serve as a guide for interpreting the Covenant, as these speeches by the United States representatives illustrate clear promises to uphold the request for self-government.¹⁹⁹ For example, Ambassador Williams stated during the fifth and final round of negotiations "the Northern Mariana Islands will be responsible for planning its own economic future, the pace and the nature of its economic growth, its land use, the allocation of its financial resources and the establishment of development goals and priorities."²⁰⁰ This language clearly demonstrates a willingness on the part of the United States to form an agreement consistent with the self-governing principals desired all along by the Northern Mariana Islands delegation.

The records also include speeches by members of the Marianas Political Status Commission that clearly illustrate the Islands' desire for self-determination.²⁰¹ For example, when referring to specific benefits of the Trusteeship Agreement that the people of the Northern Mariana wished to perpetuate into the Covenant, Herman Q. Guerrero stated during negotiations:

Under the terms of the Trusteeship Agreement, the United States is obligated, among other things, to promote the inhabitants of the Trust territory toward self-government, in accordance with the freely-expressed wishes of the people concerned. This principal of self-determination, is I feel, the most important part of the entire Trusteeship Agreement.²⁰²

Moreover, the United States' and the Islands' particular economic and national needs of the time conspired to create a truly unique relationship. Although drafting of the Covenant represented uncharted territory, the negotiating history of the Covenant clearly conveys that it was intended by both parties to be mutually beneficial. The flexible nature of the Cov-

198. See *Hearing on H.J. Res. 549, H.J. Res. 550, and H.J. Res. 547, supra* note 7.

199. See *id.*

200. See *id.* at 413. In addition, Ambassador Williams stated that "[t]he Northern Mariana Islands are not now a colony nor will they be a colony under the commonwealth covenant. The United States was charged under the trusteeship to develop the peoples of Micronesia toward self-governance or independence. The United Nations has recognized self-determination to include the right of affiliation with a sovereign state and the peoples of the Northern Mariana Islands have voluntarily chosen to seek membership in the American family. If the Congress approves the covenant the people of the [N]orthern Mariana Islands will be self-governing under their own constitution as are the States." *Id.*

201. See *Marianas Political Status Negotiations, Opening Round, supra* note 1, at 136.

202. See *id.* at 160.

enant allows certain equilibrium between "economic development and cultural, social, and political stability."²⁰³

Therefore, Congress must not make laws, which affect the Islands without taking the Islands' social and cultural values into account. Protecting social and cultural values was a key motivating factor for the Islands during the Covenant's negotiations. The mutual consent provision was crucial to protecting that right.

Moreover, the Covenant is not a document that can be interpreted on its own because it takes so many factors into consideration. The Islands did not become a part of the United States by accession; nor did it become a Commonwealth as a result of a treaty. The Islands' status as a Commonwealth was a result of negotiations between the United States and the Islands. The Islands willingly gave up limited sovereignty in order to retain its right to local self-government. For the United States to unilaterally alter this right under powers only arguably conferred by the Covenant is inherently unfair and perpetuates congressional colonialism.

VII. CONCLUSION

The Covenant has become a one-sided agreement subject to the will of Congress, with the indigenous population no longer an important player in defining its own destiny. The citizens of the Northern Mariana Islands did not intend to surrender their sovereignty; at most, they intended to give up only a portion of their sovereignty. If the Covenant's terms are not settled, the people of the Northern Mariana Islands will never be free to determine their destiny and will continue to be merely another territorial conquest of the United States. The negotiating history makes clear the original desires and expectations of the citizens of the Northern Mariana Islands. It also makes clear that the subsequent denial of these desires and expectations by the continued imposition of federal legislation over the Islands is nothing more than congressional colonialism.

The negotiating history of the Covenant indicates that the Covenant was not meant to eliminate the indigenous people's freedom or their right to self-government. The Covenant does not give the United States unbridled power. The United States' continued imposition of legislation over the Islands amounts to colonial oppression. The genius and the spirit of the Constitution prevent such oppression for all citizens of the United States.

203. Herald, *supra* note 29, at 137.

